

Minutes of the Board of Adjustment meeting held on Monday, July 14, 2008, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Rosi Haidenthaller, Chair  
Joyce McStotts, Vice-Chair  
Jonathan Russell  
Wendell Coombs  
Tim Tingey, Community & Economic Development Director  
Ray Christensen, Senior Planner  
G.L. Critchfield, Deputy City Attorney  
Citizens

Excused: Connie Howard

The Pre-Meeting the Board of Adjustment members briefly reviewed the applications. An audio recording of this is available at the Murray City Community & Economic Development office.

Ms. Haidenthaller explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and that financial issues are not considered a hardship.

#### APPROVAL OF MINUTES

There were no minutes for approval.

#### CASE #1360 - COLEEN PADEREWSKI - 1323 East Rainsborough Road

Coleen Paderewski was the applicant present to represent this request. Tim Tingey reviewed the request for a fence height variance to allow for an 8 foot high sound wall to be installed along the north and west sections of the rear yard area. The property is located within the R-1-6 (residential single family) zoning district. The lot is approximately 60' X 90'. The applicant is proposing to build a sound wall to be installed along the north and west sections of the back yard of the property. The back yard of the property abuts a parking area to the north and 1300 East is located approximately 72 feet from the proposed location of the fence. The site is located close to a transit stop along 1300 East and there is more noise problems in the area. There are special circumstances attached to the property that do not generally apply to other properties, primarily the noise associated with 1300 East Street and a bus transit stop. Similar fences have been built in this area, even up to 10 feet in height with previous variances having been granted. The spirit of the land use is observed with this request because there are sections in the ordinance where there are high traffic areas and also areas of more noise prevalent where fences are allowed to be built up to 10 feet in height. Those sites are not necessarily at this location, but in the land use ordinance there is indication for allowing of greater height fences to deal with noise issues. Mr. Tingey stated this variance request would add to the quality for the person and will mitigate the affects of the noise and also does not substantially go against the land use ordinance and staff recommends approval of the variance with a condition that permits be obtained for the site.

Coleen Paderewski, 1323 East Rainsborough Road, stated she has lived in the home for the past 26 years. She indicated that she had a letter of recommendation from one of her neighbors in favor of this request. She stated originally 1300 East was only a two-lane road and is now equal to 6 lanes. She stated that the buses run 5 a.m. to 11 p.m. continuously. The miles per hour has increased from 35 m.p.h. to 40 m.p.h. The Murray Police Department has ticketed persons going 70 m.p.h. along 1300 East. The increased traffic and speeds have increased the noise. She stated the existing fence is a 5 foot high wooden fence. Her basement is above ground and there is a change in grade and the fence line is below her

basement windows. The proposed fence would bring the height to the top of the window which would help eliminate the sound and noises. The existing fence is equivalent to a 2½ foot high fence because of the grade change. She stated that there are numerous types of noises generated in this area such as squealing brakes, motorcycles, running motors, car alarms, trash pickups, honking horns, fumes from cars, trucks and buses. Diesel fuel is also emitted from the buses.

Ms. Paderewski stated that she is recovering from cancer which can be verified by her doctor. She indicated that her property values have dropped due to the noises. She stated that she has purchased Pella windows to take care of the upstairs with triple panes that have helped with the noise. She stated that there are also problems with the vertical exhaust systems because of the fumes. She stated on Friday, June 27<sup>th</sup>, there were six Murray police cars and ambulances with people attempting to jump over fences. She showed photos where the buses and cars line up along 1300 East close to her home. She stated that she has received approval from her Home Owners Association for the 8 foot fence height and will be consistent with other fences in this area.

Rosi Haidenthaller asked if there is one property between Ms. Paderewski's property and 1300 East. Ms. Paderewski responded in the affirmative. She explained that her adjacent neighbor has an 8 foot high fence along the west property line.

Wendell Coombs asked for clarification on the exact location for the 8 foot height. Ms. Paderewski responded she is requesting the 8 foot height only on a portion of the fence and she has spoken with the adjacent neighbor who has indicated her approval of the fence height and is present at this meeting.

Joyce McStotts asked the exact length for the 8 foot fence height. Ms. Paderewski responded that the length is approximately 70 feet along the back and side of the property.

Judy Parker, 1315 East Rainsborough Road, stated her property is the first property from 1300 East Street and is adjacent to Ms. Paderewski. Ms. Parker commented that they get a tremendous amount of pollution from 1300 East and she is in support of this variance request at the back of the property, but not along the side of the property between her property and Ms. Paderewski. She stated there is a zero lot line. She felt the higher fence between the two properties would devalue her property and would build up pollution on her property. She stated if she ever needs to have repairs done to the side of her home, it will be more difficult to access her property if there is a solid wall installed as opposed to a fence along the side property line. Mr. Russell responded that the proposed wall cannot extend into Ms. Parker's property and must be on Ms. Paderewski's property.

Ms. Parker stated the property line is at the end of her home, but she has awnings and gutters that come over and she has the right to access her property for repairs, etc. on her side of the property.

Joyce McStotts questioned Ms. Parker's comments regarding access onto Ms. Paderewski's property for maintenance. Ms. Parker responded that there is a utility easement along the sides of the property.

John Sebba, 6224 South Rainsborough Circle, stated his property is 4 homes away. He stated that he and a two other residents were granted a fence height variance along 1300 East. He stated that they have enjoyed their rear yards much more since the fence height variance was

granted and it has cut down on the smells and sounds from the busy 1300 East Street. He stated that he was in favor of this proposed variance request of Ms. Paderewski.

Kent Zwahlen, 6202 South Rainsborough Circle, stated he also received a fence height variance along with Mr. Sebba. He stated he is also on the board for the Home Owners Association and they are in favor of this fence height variance. Mr. Zwahlen explained that the access between Ms. Parker and Ms. Paderewski's property has a subordinate property line so that the property line ends at the home, but they have to allow access from the front to provide maintenance to the side of the home. He stated that this subdivision was built as a P.U.D. He stated that they take into account the opinions of the home owners when making decisions on behalf of the Home Owners Association and that he has spoken with Judy Parker on this proposal. He stated there are also pine trees between the two homes and a wall would help that situation by providing a better separation.

Valerie Trueting, 6210 Rainsborough Circle, stated she also received a variance for a fence height along with Mr. Sebba and Mr. Zwahlen. She stated she is in support of this fence variance request. She stated since they obtained their fence height variance, they have been able to enjoy their rear yards and it has helped reduce the noise and pollution that previously existed.

Christine Green, 8657 Buena Vista Drive, stated she is Coleen Paderewski's daughter. She stated that she grew up in the home and shared a couple of experiences with the existing lower height fence. She stated that she experienced seeing into a neighbors window where in they were inappropriately dressed on several occasions and that a higher fence would help eliminate these problems.

Mariam McFadden, 1369 East Rainsborough, stated she is not opposed to this variance request and can understand why Ms. Paderewski is desirous to have the taller fence height.

Joyce McStotts asked if this subdivision is a planned unit development or is it a condominium project. Mr. Zwahlen indicated that it is a P.U.D. and that the residents are responsible for their own fencing and maintenance of the homes.

Rosi Haidenthaller ask about the fence request with regards to the property lines. Mr. Tingey responded that the fence variance request for the additional 2 feet height is for the rear and side property lines and the Board must act on the request as submitted.

Wendell Coombs made a motion to grant the variance as requested based on the staff recommendation, meeting the five criteria as mentioned previously. Seconded by Jonathan Russell.

Call vote recorded by Ray Christensen.

<u>A</u>	Mr. Coombs
<u>A</u>	Ms. Haidenthaller
<u>A</u>	Mr. Russell
<u>A</u>	Ms. McStotts

Motion passed 4-0.

CASE #1362 - MID-VALLEY MEDICAL II - 5801 South Fashion Boulevard

Gordon Jacobson was present to represent this request. Ray Christensen reviewed the location and request to not install a buffer fence along the south and northeast portion of the property. The Murray City Code Section 17.144.130 requires a 10 foot depth of landscaping adjoining a residential zone boundary. The applicant is requesting a variance for a 5 foot landscaping depth for about 155 foot length at the east side of the property and about a 9 foot depth for about 210 feet length at the south east area of the property. The site is located within the G-O (general office) zone. The property contains approximately 2.75 acres. There is an existing office building on the property built about September 1975 which has recently been remodeled. The applicant plans to construct a new office building on the site which will require compliance to the current ordinance standards for the buffer wall and landscaping adjacent to the residential zone boundaries. There is a row of single family dwellings to the east side of the property and a school located to the south which is in a residential zone. The property is adjacent to a residential zone at the east and south side of the property. The literal enforcement of the code would not impose unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance because the applicant is proposing to construct a larger office building on the site than can be accommodated and not meeting the landscaping and buffer wall requirements. The applicant could design the building and site plan to meet the ordinance requirements. Based on review and analysis of the application material, subject site and surrounding area, and applicable Municipal Code sections, Community and Economic Development Staff finds that the proposal does not meet the standards for a variance.

Gordon Jacobson, 276 South 600 East, Alpine, stated he is the owner of Mid-Valley Medical. Mr. Jacobson stated when he purchased this property several years ago, their intent was to redevelop the site and make it an attractive building. Part of the remodel was to include construction of a second building which they anticipate would help make the project financially viable. The existing parking lot has no landscaping on the east or south boundaries. The south boundary currently borders an elementary school which is technically a residential zone, however, the school is nearing its projected life span and the likelihood that it would be developed residentially is less than likely and would be developed as another school or a commercial use. Everything south of the school is commercial along both sides of Fashion Boulevard down to I-215. Mr. Jacobson commented that since there hasn't been a masonry wall between this property and the school for 30 years obviously it isn't a huge problem and they would like to use that 10 foot landscape area to create a vegetative wall which would be more aesthetic than a masonry wall. There is no existing landscaping along the east boundary. They researched the original site plan which was approved with a 4 foot landscape strip along both the south and east boundaries, which neither were installed. The site plan has been redesigned to get the 10 feet along the south and along the majority of the east boundary. There is one section where the building pad site is close to the second access on the north end of the property and a 10 foot buffer would significantly impact parking on the site which is the purpose for this application. They would like to proceed with the application and were advised by the planning department that they ought to apply for a variance prior to submitting site plan approval for the second building site.

Jonathan Russell asked how long Mr. Jacobson has owned the property. Mr. Jacobson responded that he has owned the property approximately 2 years. Mr. Russell asked why Mr. Jacobson does not build to meet the city requirements. Mr. Jacobson responded that there are two established access points on Fashion Boulevard on the site and they are attempting to place the building between the two access points. If they continue with 10 feet of landscaping towards the north end running eastward it would reduce the pad site.

Mr. Russell asked the basis for the hardship associated with the requested variance. Mr. Jacobson responded that there are existing conditions on the property, but technically they can meet the standards.

Ron Richter, 5786 South Meadow Crest Drive, stated that his home is to the east of the property in question. Mr. Richter stated that he installed the wall along the adjacent boundary and there is an access to the property that has been used for over 20 years. He asked that the landscaping not be installed along the wall because if trees are planted it could damage his wall. He asked if his access will remain along the boundary of the property in question. Mr. Jacobson responded that he would like to maintain the existing accesses for the adjacent neighbors if possible, but if landscaping is required it may not be possible.

Victoria Bolinger, 5769 South Hillside Drive, submitted a petition with 16 signatures opposing the requested variances indicating it will affect their property values because the construction of the building is directly between the homes and the mountains and would block their view of the mountains. She stated the property value of the neighborhood is based on the view of the mountains and is why she purchased her home. The residents signed this petition because they do not want their view blocked and there are existing parking problems along Hillside Drive due to lack of parking at the existing building and one of the employees that works in the building signed the petition. She stated that she spoke with the doctors who have offices in the existing building and they indicated to her that there is already a lack of parking and this variance would only compound that problem. She stated the neighbors on the other side of the property are also opposed to the variance. She stated that a solid masonry wall would provide better protection for the school children than the existing fence with access gates.

Ms. Haidenthaller stated that property owners have the right to develop their property within the zoning regulations. She stated this is difficult because residents views of the mountains do not come into consideration as justification to deny a development. Height limitations are enforced to the extent of the zoning and building regulations.

Mr. Christensen explained that the previous application for the planning commission was to convert the existing building into office condominiums and the surrounding residents received notice of that meeting. The future building is the catalyst for these variance requests, however, the future building has not been approved at this time. Variances are typically requested prior to approval of the development itself.

Kevin Peterson, 9130 South State Street, stated he is working with Gordon Jacobson. Mr. Peterson commented that this property was purchased with due diligence made on the purchase of the property. He stated that in 1975 the existing site plan was approved with the 4 foot landscape buffer strip. Recently there was a condominium conversion that occurred on the existing building and showed a future building pad. That plan also showed the 4 foot landscaping along both boundary lines. As an effort to make everything work as much as possible, they looked at the parking and spacing requirements and made adjustments where it would still work without changing or disrupting that due diligence with the building and landscaping buffer. Along the south side of the property they were able to accommodate the 10 foot buffer where there is an existing 6 foot high chain link fence. He stated that they feel they can mitigate that side with landscaping and other aspects and still maintain what has been on the property for the past 30 years.

Rosi Haidenthaller commented that in 1975 when the original site plan was approved, the standard may have been 4 feet of landscaping or not, but there are numbers of properties in the city that do not comply with the standards and when property is developed the city's intent is to

bring those properties into compliance. These standards were decided upon by the city council and planning commission, etc. and this is an opportunity to bring the property into compliance. She stated the adjacent residents access into this property may be an issue that the various property owners wish to decide and possibly that approval should be in writing between themselves. The residents access into this property has been granted simply out of the kindness of the property owner and there is no legal access.

Jonathan Russell made a motion to deny the variance request of Mid-Valley Medical II because the five criteria for granting a variance does not appear to be met. Seconded by Joyce McStotts.

Call vote recorded by Ray Christensen.

<u>A</u>	Mr. Coombs
<u>A</u>	Ms. Haidenthaller
<u>A</u>	Mr. Russell
<u>A</u>	Ms. McStotts

Motion passed 4-0.

Meeting adjourned.

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Ray Christensen, AICP  
Senior Planner